

REMARKS

Claims 1, 2, and 4-12 are pending in the present application. Claims 8-12 are withdrawn from consideration. Claims 1, 2 and 4-7 are rejected. No new claims are added and no new matter has been entered. In light of the aforementioned amendments and following remarks, Applicants earnestly solicit favorable consideration.

On the Merits

Claim Rejections - 35 U.S.C. § 103(a)

Claims 1, 2, 4 and 7 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Roberts et al.* (US Publication 2001/0055707) in view of *Barton et al.* (US Publication 2003/0022041) and *Tsutomu et al.* (JP 2000-243417). Claims 5-6 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Roberts et al.* in view of *Barton et al.* as applied to claim 4 above and further in view of *Nonobe* (US Publication 2002/0192520) hereinafter referred to as *Roberts, Barton, Tsutomu and Nonobe*, respectively.

Independent Claim 1:

The examiner largely relies on the rationale as previously used to rejected independent claim 1. However claim 1 requires several new features in which the examiner applies new art and a new rationale in an attempt to disclose the claimed invention.

Claim 1 recites that:

...a second passage connecting the fuel battery to an exterior, through an ejector....

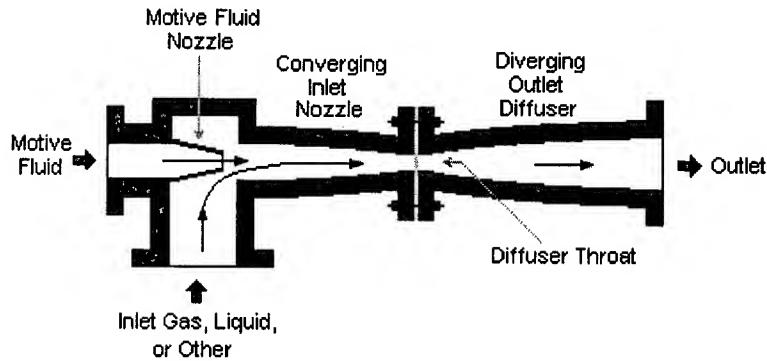
The examiner contends that the above recited second passage is disclosed by *Roberts* in FIG. 3. Please see reference character 777 shown on page 5 of the office action which shows an exhaust line connecting the reservoir 232 to the second solenoid valve 234.

The examiner acknowledges that an ejector is not disclosed, but contends that “these elements are well known in the art.” While an ejector may be well known in the art, applicants assert that the statement by the examiner that the ejector would therefore be obvious, is inappropriate for the following reasons.

First, the examiner does not state why it would be obvious to place the ejector in the location recited in claim 1. That is, in claim 1 the ejector connects a second passage to an exterior. There is no evidence provided in the cited references or office action as to where the ejector would be positioned, much less in a second passage between the fuel battery and an exterior.

Second, an ejector would not function appropriately in the invention of *Roberts*. That is, as stated by the examiner on page 4 of the office action, an ejector uses a partial vacuum using

the Venturi effect. Two sources of fluid are used in an ejector; the first source being the motive fluid and the second being the gas or liquid desired to be ejected. Please see the diagram below.¹



As evidenced from FIG. 3 of *Roberts*, only 1 liquid source is present, that of the second exhaust line 777. To the contrary, as shown in FIG. 1 of the present drawings, Hydrogen tank 32 is also connected to the ejector, thus providing the motive fluid.

Roberts, as disclosed in FIG. 3, could simply not operate with an ejector because a second fluid source is not disclosed. Because a second fluid source is not shown in *Roberts*, the examiner's contention that an ejector would be obvious is inappropriate.

Further, in order for the ejector to work, an additional pipe containing a second fluid source would need to be created. This would increase the cost and complexity of the device, thus teaching away from the use of an ejector.

¹ Wikipedia.org.

Additionally, as disclosed in *Roberts*, only air is vented from valve 234. Paragraph [0042]. As such, an ejector would not be needed as there would not be a reason why a person having ordinary skill in the art would want to eject air from the passage, when it could simply be vented.

Third, MPEP 2144.03(C) recites:

If applicant challenges a factual assertion as not properly officially noticed or not properly based upon common knowledge, the examiner must support the finding with adequate evidence.

Thus, applicants ask the examiner to support his position with evidence, that an ejector would be obvious connecting a second passage from the fuel battery to an exterior, if the rejection is to be maintained.

Independent claim 1 also recites two other new features:

a hydrogen sensor installed in the second passage at a position located downstream of the ejector and producing an output indicating that hydrogen gas flows into the second passage at a position located downstream of the ejector;

and the electronic control unit terminates purging of the residue when it is detected that the hydrogen gas flows into the second passage at a position located downstream of the ejector from the output of the hydrogen sensor.

The examiner acknowledges that the above recited features are not disclosed or suggested in *Roberts*. Instead, the examiner points to *Barton* and *Tsutomu* in attempting to disclose the claimed features.

Recall from above that the examiner contends that the second passage is disclosed by reference character 777 (see page 5 of office action). As recited above, the hydrogen sensor of claim 1 is placed downstream of the ejector. No indication of this feature is disclosed in any of the cited references. *Tsumoto* does appear to disclose a hydrogen sensor, however it does not disclose that any ejector is used. As such, it does not disclose the location of the hydrogen sensor, as the examiner suggests.

Further, as indicated above, the examiner contends that said ejector would be used in the exhaust line 777, as shown in FIG. 3 of *Roberts*. However, as discussed above, this exhaust line only discharges air. As such, there would be no reason to place a hydrogen sensor in said exhaust line as no hydrogen is allegedly in the exhaust line according to *Roberts*.

In light of the remarks mentioned above, applicants respectfully ask that the examiner withdraw the rejection and allow the application.

Dependent Claims 1, 2 and 4-7

As the dependent claims each ultimately depend from independent claim 1, the arguments provided above regarding claim 1 also apply to the independent claims.

Application No.: 10/849,371
Art Unit: 1795

Response under 37 C.F.R. §1.111
Attorney Docket No.: 042421

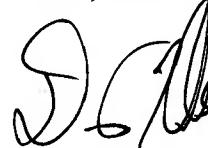
In view of the above, Applicants respectfully submit that their claimed invention is allowable and ask that the rejection under 35 U.S.C. §103 be reconsidered and withdrawn. Applicants respectfully submit that this case is in condition for allowance and allowance is respectfully solicited.

If any points remain at issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the local exchange number listed below.

If this paper is not timely filed, Applicants respectfully petition for an appropriate extension of time. The fees for such an extension or any other fees that may be due with respect to this paper may be charged to Deposit Account No. 50-2866.

Respectfully submitted,

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